

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LING CAI, et al.,  
 Plaintiff(s),  
 v.

ENTERPRISE LEASING COMPANY-  
 WEST LLC, et al.,  
 Defendant(s).

Case No. 2:23-cv-00050-NJK

**ORDER**

[Docket No. 39]

Pending before the Court is the motion to dismiss for failure to state a claim brought by the ACE American Insurance Defendants. Docket No. 39.<sup>1</sup> Plaintiffs filed a response in opposition. Docket No. 40. The ACE Defendants filed a reply. Docket No. 41.<sup>2</sup> The parties have consented to the undersigned magistrate judge presiding over this case. *See* Docket No. 53; *see also* Fed. R. Civ. P. 73. The motion to dismiss is properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion to dismiss is **GRANTED** in part and **DENIED** in part.

**I. BACKGROUND**

This is an insurance case arising out of an automobile accident involving a rental car. *See* Docket No. 35 at ¶¶ 14-22. Insurance coverage for that accident was denied. *Id.* at ¶¶ 23-40.<sup>3</sup> Plaintiffs brought suit originally in state court, and the case was removed on diversity grounds.

<sup>1</sup> The movants are ACE American Insurance Company; ESIS Inc, dba Chubb North American Claims; Chubb Services Corporation dba Chubb North American Claims; Chubb National Insurance Company; and Chubb Indemnity Insurance Company.

<sup>2</sup> The ACE Defendants' briefing routinely omits pin-citations for the legal authority cited. Counsel must ensure moving forward that specific pages are identified. *See* Local Rule IA 7-3(b).

<sup>3</sup> A more fulsome factual background has been provided elsewhere, Docket No. 32 at 2, and the parties are familiar with the facts. So, the Court will not provide a detailed factual background herein.

1 See Docket No. 1. In the operative complaint, Plaintiffs bring claims for breach of contract  
 2 (assigned direct beneficiary), breach of the implied covenant of good faith and fair dealing, breach  
 3 of contract (third party beneficiary), violations of the Nevada Unfair Claims Practices Act, and  
 4 Declaratory Judgment. Docket No. 35 at ¶¶ 54-115. The parties are currently before the Court on  
 5 the ACE Defendants' motion to dismiss parts of the second amended complaint. Docket No. 39.

## 6 II. STANDARDS

7 In considering a motion to dismiss for failure to state a claim upon which relief can be  
 8 granted, courts accept all well-pled factual allegations in the operative complaint as true and  
 9 construe them in the light most favorable to the nonmoving party. *Fields v. Twitter, Inc.*, 881 F.3d  
 10 739, 743 (9th Cir. 2018). To avoid dismissal, the operative complaint must contain more than  
 11 "naked assertion[s]," "labels and conclusions," or "a formulaic recitation of the elements of a cause  
 12 of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). "Threadbare recitals of  
 13 the elements of a cause of action, supported by mere conclusory statements, do not suffice."  
 14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Instead, the operative complaint must show that there  
 15 is facial plausibility to the claim. *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when  
 16 the plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
 17 defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

## 18 III. ANALYSIS

19 The motion to dismiss seeks relief on three issues: (1) that the Chubb Defendants must be  
 20 dismissed because they are not parties to the subject policy; (2) that the Nevada Unfair Claims  
 21 Practices claim must be dismissed because there is no private cause of action under Nevada  
 22 Administrative Code 686A and because the factual allegations lack sufficient specificity; and (3)  
 23 that there is no stand-alone cause of action for declaratory relief. The Court will address each issue  
 24 in turn.

### 25 A. Causes of Action Against Chubb Defendants

26 The ACE Defendants argue that the Chubb Defendants must be dismissed because they are  
 27 not parties to the subject policy. Docket No. 39 at 6-7; *see also* Docket No. 41 at 6-7. Plaintiffs  
 28

1 argue that the Chubb Defendants are properly named under the joint venture exception. Docket  
2 No. 40 at 4-6.

3 Generally, “no one is liable upon a contract except those who are parties to it.” *Albert H.*  
4 *Wohlers & Co. v. Bartgis*, 969 P.2d 949, 959 (Nev. 1998) (per curiam), *as amended* (Feb. 19,  
5 1999) (quotation omitted). “However, according to a well-established exception to this general  
6 rule, where a claims administrator is engaged in a joint venture with an insurer, the administrator  
7 may be held liable for its bad faith in handling the insured’s claim, even though the organization  
8 is not technically a party to the insurance policy.” *Id.* (quotation omitted). Evidence of a joint  
9 venture may include that the administrator “developed promotional material, issued policies, billed  
10 and collected premiums, paid and adjudicated claims, . . . assisted [the insurer] in the development  
11 of [policy language],” and shared in the insurer’s profits. *Id.*; *see also Iovino v. Amtrust Fin. Servs.,*  
12 *Inc.*, 2023 WL 5628429, at \*5 (D. Nev. Aug. 30, 2023).

13 The Court agrees with Plaintiffs that facial absence from a policy does not automatically  
14 render an entity immune from later suit arising out of that policy. *Wohlers*, 969 P.2d at 959. On  
15 the other hand, the Court agrees with the ACE Defendants that sufficient allegations have not been  
16 pled showing that the Chubb Defendants are amenable to suit under that exception. The overriding  
17 problem with Plaintiffs’ position is that their briefing addresses the connection between Enterprise  
18 and “the ACE Defendants” without specification as to each of the pertinent entities, *see* Docket  
19 No. 40 at 6, and the operative complaint also lumps various defendants together, *see, e.g.*, Docket  
20 No. 35 at ¶ 9. Rule 8 requires sufficient allegations be pled against each defendant. *See Arikat v.*  
21 *JP Morgan Chase & Co.*, 430 F. Supp. 2d 1013, 1020 (N.D. Cal. 2006) (citing *Gauvin v.*  
22 *Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988)); *see also Central Tel. Co. v. K&N Gen.*  
23 *Constr., Inc.*, 2023 WL 9035279, at \*3 (D. Nev. Dec. 29, 2023). Plaintiffs have not sufficiently  
24 explained how each of the Chubb entities they have sued are amenable to suit.

25 Accordingly, the motion to dismiss will be granted as to this issue.

26 B. Cause of Action Under the Unfair Claims Practices Act

27 The ACE Defendants argue that the fourth cause of action (for unfair claims practices)  
28 must be dismissed because it relies in part on an administrative code provision and does not plead

1 fraud with specificity. Docket No. 39 at 7-8; *see also* Docket No. 41 at 3-6. Plaintiffs argue that  
2 the complaint properly identifies administrative violations in support of the claim and that the  
3 allegations are sufficiently specific. Docket No. 40 at 7-9.

4 With respect to the first argument regarding allegations involving the administrative code,  
5 the Court agrees with Plaintiffs that dismissal of this claim is not warranted. This cause of action  
6 is not based solely on an alleged violation of the administrative code, and no meaningful  
7 explanation has been advanced as to why a cause of action can be dismissed based on additional  
8 allegations of administrative code violations. *Compare Yoon v. Travelers Indem. Co.*, 2021 WL  
9 1968279, at \*3 (D. Nev. May 17, 2021) (addressing unopposed argument that the administrative  
10 code references were improper and then dismissing the cause of action under the Unfair Claims  
11 Practices Act because sufficient factual allegations had not otherwise been pled to support the  
12 claim).<sup>4</sup> The ACE Defendants appear at times instead to be asking to strike reference to the  
13 administrative code, *see, e.g.*, Docket No. 39 at 10, but the ACE Defendants have not explained  
14 why striking part of the complaint is warranted and do not seek relief under Rule 12(f) of the  
15 Federal Rules of Civil Procedure. The Court declines to dismiss this cause of action on the basis  
16 that it references in part an administrative code provision.

17 With respect to the second argument regarding the pleading standards for malice,  
18 oppression, or fraud, the Court agrees with Plaintiffs that dismissal is not warranted. Many courts  
19 within the Ninth Circuit have concluded that the heightened pleading standard established in Rule  
20 9(b) of the Federal Rules of Civil Procedure does not apply to seeking the remedy of punitive  
21 damages based on malice, fraud, or oppression. *See, e.g., Bird v. Globus Med., Inc.*, 2020 WL

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25 <sup>4</sup> In another case cited by the ACE Defendants, the court granted summary judgment on  
26 causes of action brought expressly under administrative code provisions. *Fernandez v. State Farm*  
27 *Mut. Auto. Ins. Co.*, 338 F. Supp. 3d 1193, 1201 (D. Nev. 2018) (entering summary judgment  
28 because, “instead of pleading a claim for unfair claim practices under NRS 686A.310—as is the  
widespread and common practice in Nevada because NRS 686A.310 grants a private right of  
action to redress the unfair claims practices that it describes—[the plaintiff] pleads claims for  
violations of three provisions of the Nevada Administrative Code”). In this case, however,  
Plaintiffs bring a claim under the Unfair Claims Practices Act.

1 5366300, at \*7 (E.D. Cal. Sept. 8, 2020) (collecting cases). The Court agrees with that approach  
 2 and concludes that dismissal is not warranted here on the basis of non-compliance with Rule 9(b).<sup>5</sup>

3 Accordingly, the motion to dismiss will be denied as to these issues.

4 C. Cause of Action for Declaratory Relief

5 The ACE Defendants argue that the Cause of Action for Declaratory Relief must be  
 6 dismissed because it is a remedy, not a cause of action, and it is duplicative of the breach of contract  
 7 claim. Docket No. 39 at 8-9. Plaintiffs respond that a stand-alone cause of action exists for  
 8 declaratory relief pursuant to Nevada law. Docket No. 40 at 9-10.

9 Plaintiffs' breach of contract claim seeks relief on the ground that Defendants failed to  
 10 defend Jiaping and pay the judgment against him. *See, e.g.*, Docket No. 35 at ¶ 65. Plaintiffs have  
 11 not identified any declaration they seek separate and apart from what is already covered by the  
 12 breach of contract claim. *See* Docket No. 40 at 9-10. Declaratory relief claims that are duplicative  
 13 of a plaintiff's other claims are subject to dismissal. *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th  
 14 Cir. 2007). Courts routinely grant dismissal in such circumstance. *See Rosas v. GEICO Cas. Co.*,  
 15 365 F. Supp. 3d 1123, 1128 (D. Nev. 2019); *see also Ballesteros v. Garrison Prop. & Cas. Ins.*  
 16 *Co.*, 2023 WL 3169864, at \*3 (D. Nev. Apr. 27, 2023) (collecting cases). The Court will do the  
 17 same here.<sup>6</sup>

18 Accordingly, the motion to dismiss will be granted as to this issue.

19 D. Amendment

20 Plaintiffs seek an opportunity to further amend their complaint. Docket No. 40 at 10. Rule  
 21 15 of the Federal Rules of Civil Procedure requires district courts to "freely give leave [to amend]  
 22 when justice so requires." Fed. R. Civ. P. 15(a)(2). This policy is "to be applied with extreme  
 23 liberality." *Eminence Capital LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (quotation  
 24 omitted). "[A] district court should grant leave to amend even if no request to amend the pleading  
 25

26 <sup>5</sup> The ACE Defendants cite to an unpublished Ninth Circuit case from 1995, *e.g.*, Docket  
 27 No. 39 at 8, but such a memorandum is not citable precedent, Ninth Circuit Rule 36-3(c).

28 <sup>6</sup> Because the Court is granting the motion to dismiss on duplication ground, it need not  
 reach the alternative argument that declaratory relief can never be a stand-alone cause of action.

1 was made, unless it determines that the pleading could not possibly be cured by the allegation of  
2 other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (quotation omitted).  
3 “Amendment is futile only if no set of facts can be proven under the amendment that would  
4 constitute a valid and sufficient claim.” *Rosas*, 365 F. Supp. 3d at 1128.

5 The Court cannot say based on the current circumstances that amendment would be futile.  
6 Accordingly, Plaintiffs will be given leave to amend.<sup>7</sup>

7 **IV. CONCLUSION**

8 For the reasons discussed above, the motion to dismiss is **GRANTED** in part and **DENIED**  
9 in part. Any further amended complaint must be filed by March 29, 2024.

10 IT IS SO ORDERED.

11 Dated: February 27, 2024

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15 Nancy J. Koppe  
16 United States Magistrate Judge  
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26 <sup>7</sup> The Court is mindful that leave to amend has been afforded previously to Plaintiffs,  
27 Docket No. 32, and that prior amendments may militate against additional opportunity to amend,  
28 e.g., *City of Los Angeles v. San Pedro Boat Works*, 635 F.3d 440, 454 (9th Cir. 2011) (quoting  
*Ascon Props., Inc. v. Mobile Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989)). While the Court is  
allowing amendment herein, it may be less inclined to do so again.